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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:	)	
	)	
PETITION TO AMEND	)	Supreme Court No. R-08-_____
SUPREME COURT RULE 96	)	
_____	)	

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Administrative Director, respectfully petitions this Court to adopt an amendment to Rule 96 of the Arizona Supreme Court Rules, governing powers and duties of superior court commissioners, as proposed in the attached Appendix A.

**I. Background and Purpose of the Proposed Rule Amendments**

The proposed amendment would expand the powers and duties of court commissioners to enable them to hear a wider range of criminal proceedings. The expanded duties have been tested on a pilot basis by the Superior Court in Coconino and Yavapai Counties pursuant to Administrative Order No. 2008-42, which identified the following reasons for the proposed rule change:

Article VI, Section 24 of the Arizona Constitution permits superior court judges to appoint court commissioners to fill the gap in judicial resources and effectuate more efficient case processing. Commissioners are generally appointed from the ranks of experienced local attorneys and

retired judges, and generally function without the full cadre of support staff and amenities normally associated with the creation of a new judgeship.

Supreme Court Rule 96 specifies the powers and duties of superior court commissioners and authorizes them to preside over an extensive list of proceedings in family, probate, and civil matters. However, in criminal matters the rule limits their assignment to a narrow range of pre- and post-trial proceedings. For those attorneys and former judges possessing the requisite expertise in criminal cases, the rule's strictures present a needless impediment to facilitating prompt resolution of criminal cases through the assignment of pre- and post-trial proceedings to commissioners. Expanding commissioners' duties to encompass a broader range of criminal proceedings can be expected to reduce costs and improve the parties' and victims' satisfaction with court operations in furtherance of the Strategic Agenda.

The pilot program demonstrated that expanded use of commissioners in criminal matters is a cost-effective case management tool that should be made available statewide. Commissioners work for less money than judges pro tempore, who must be paid an amount equal to a superior court judge (A.R.S. §12-142(C)). Projections from the pilot program indicate the most significant savings will be realized as a direct result of improvements in case processing timeframes, which translate to fewer jail days for in-custody defendants awaiting pre-trial release on bail or post-conviction release on probation. The Superior Court in Coconino County estimated the annual cost savings to the county at more than \$200,000. The court also reported a nearly 40 percent reduction in time-to-disposition for probation revocations assigned to the pilot project commissioner.

The proposed rule change promises to advance the Supreme Court’s strategic goal of providing access to swift, fair justice, and should be made available statewide by amending Rule 96 as proposed in the attached Appendix A.

## **II. Contents of the Proposed Rule Amendment**

The amendment to subsection (a)(11) will add the following types of additional criminal hearings over which commissioners can preside:

<b>Existing Authority in Criminal Proceedings</b>	<b>Proposed Expanded Authority in Criminal Proceedings</b>
Initial appearance (RCrimP 4)	Preliminary hearing (RCrimP 5)
Arraignment (RCrimP 4, 14)	Continuance of trial date (RCrimP 8)
Appointment of indigent counsel (RCrimP 6)	Change of judge (RCrimP 10)
Pre-trial release (RCrimP 7)	Change of venue (RCrimP 10)
Accepting pleas (RCrimP 17.1-.4, 17.6)	Mental competency examination (RCrimP 11)
Probation revocation – arraignments, admissions, and dispositions (RCrimP 27.8(a)&(e), 27.9)	Challenges to grand jury proceedings (RCrimP 12.9, 12.28)
	Pretrial disclosure (RCrimP 15)
	Motion to suppress evidence (RCrimP 16.2)
	Omnibus hearing (RCrimP 16.3)
	Withdrawal of guilty or no contest plea (RCrimP 17.5)

	Imposing and modifying terms of probation (RCrimP 27)
	Admissibility of prior conviction (REvid 609)
	Determining restitution (A.R.S. §13-804)

The proposal also corrects a number of outdated references to rules and statutes to reflect current numbering. In addition, the change to rule 96(a)(4) conforms the rule to current practices in superior court.

### **III. Pre-Petition Distribution and Comment**

The presiding superior court judges have indicated their support for the proposal. Petitioner requests that the proposal be circulated for comment pursuant to Supreme Court Rule 28.

Wherefore petitioner respectfully requests that the Supreme Court amend Rule 96 as set forth in Appendix A.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By \_\_\_\_\_  
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## Appendix A

### Supreme Court Rule 96. Powers and Duties of Court Commissioners

All court commissioners and juvenile court commissioners appointed in accordance with Article VI, Section 24, of the Constitution of the State of Arizona, and Sections 12-213 and ~~8-231.03~~ 8-231 of the Arizona Revised Statutes, shall have such powers and duties as are provided by this Rule.

(a) Powers of Commissioner; Hearings and Determinations; Order; Contempt. Each court commissioner shall, except as otherwise provided by this Rule, have the power to:

(1) through (3) [no changes]

4. Hear and determine, when so assigned by the presiding judge of the Superior Court, any matter arising under Article 10, Chapter 9, Title ~~42~~ 25, Arizona Revised Statutes (entitled “Uniform ~~Enforcement of~~ Interstate Family Support Act”), ~~except determinations of paternity, unless the commissioner finds that the respondent’s denial of paternity is frivolous.~~

(5) through (10) [no changes]

11. Hear and determine any matter governed by Rules 4, 6, 7, 12.7, 12.26, 14, 17.1, 17.2, 17.3, 17.4, 17.6, ~~27.7(a), 27.7(e) and 27.8(a) and (e), and 27.9~~, Rules of Criminal Procedure, and, if approved by the presiding judge due to a commissioner’s extensive litigation or judicial experience, hear and determine any matter governed by Rules 5, 8, 10, 11, 12.9, 12.28, 15, 16.2, 16.3, 17.5, and 27, Rules of Criminal Procedure; Rule 609, Rules of Evidence; and A.R.S. §13-804.

(12) through (17) [no changes]

(b) (1) [no changes]

2. Adjudicate any person in contempt of court or impose any fine or punishment therefor, except as provided in Rule ~~94~~ 96(a)(10) and (16).

(c) through (e) [no changes]

(f) Powers of Juvenile Court Commissioner; Hearings and Determination; Order; Contempt. All juvenile court commissioners appointed in accordance with Article VI, Section 24, of the Constitution of the State of Arizona, and Section 8-231.03 of the Arizona Revised Statutes, shall have the power to:

(1) through (3) [no changes]

4. Hear and determine under Rules ~~15 and 16~~ 48, Rules of Procedure of the Juvenile Court, any uncontested petition commenced under Chapter 2, Title 8, Arizona Revised Statutes, concerning a dependent child, provided, however, that if the matter becomes contested the juvenile court commissioner shall transfer the matter to a judge of the juvenile court for further proceedings. Notwithstanding the foregoing provision, a juvenile court commissioner shall have the power to hear and determine requests for review of temporary custody filed pursuant to ~~A.R.S. § 8-546.06~~ Rule 51, Rules of Procedure for the Juvenile Court, and to enter necessary temporary orders when declaring a child a temporary ward of the court upon the filing of a dependency petition pursuant to Rule ~~15(b)~~ 48(B), Rules of Procedure for the Juvenile Court.

5. Hear and determine any matter arising under ~~A.R.S. § 8-242.01~~ Title 8, Chapter 2, Article 6 and Title 36, Chapter 5, Article 4, Arizona Revised Statutes, pertaining to evaluation, treatment and placement of a mentally ill child and mental health services for such a child.

6. Hear and determine an application filed pursuant to Section ~~8-247~~ 8-349, Arizona Revised Statutes (~~entitled "Destruction of Records"~~).

(7) through (9) [no changes]

10. Hear and dispose of any and all cases wherein a child under the age of 18 years on the date of the alleged offense and on the date of the hearing is charged with ~~an alcohol offense, as defined by Section 8-201, Arizona Revised Statutes,~~ the purchase possession or consumption of spirituous liquor or a violation of the motor vehicle code not declared to be a felony.

(11) through (14) [no changes]

(g) Restrictions on Powers; Ex Parte Orders; Contempts. A juvenile court commissioner shall not make ex parte orders which would deprive a person from

custody of his child or deprive a person of his liberty, except in default hearings or for necessary temporary matters preceding a hearing. Nor shall a juvenile court commissioner adjudicate any person in contempt of court, or impose any fine or punishment therefor, except as provided in Rule 94 96(f)(14).

(h) [no changes]

(i) Part-Time Pro Tempore Court Commissioners and Part-Time Pro Tempore Juvenile Court Commissioners. A part-time pro tempore court commissioner and a part-time pro tempore juvenile court commissioner, under this rule, are lawyers who serve or expect to serve on less than a full-time basis under a separate appointment for each period of less than full-time service or for each case heard. As such, the conduct of part-time pro tempore court commissioners or part-time pro tempore juvenile court commissioners shall be governed by section ~~B~~ D of the ~~compliance~~ application section of Rule 81, Rules of the Supreme Court.